



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,538	10/12/2001	Michael P. McLeod	7504-80241	1515
24628	7590	11/10/2004	EXAMINER	
WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606			OROPEZA, FRANCES P	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,538

Applicant(s)

MCLEOD ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/9/03 (REC and Amendment).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. The Applicant's submission filed on 8/9/04 has been entered.

Response to Amendment

2. The Applicant amended independent claim 1 to overcome the rejection of record, hence the rejection of record is withdrawn and a new rejection established in the subsequent paragraphs.

Claim Rejections - 35 USC § 102/ 35 USC § 103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2 and 13 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Platt (US 6730025) in view of Flach et al. (US 6773396).

Platt discloses a physiological signal acquisition device comprising a hand-held portable processing element (2), and an acquisition unit (1) with sensors (6) (figure 1; col. 1 @ 4-8; col. 4 @ 13-34). The concept of disposing the acquisition unit on the chest amounts to an intended use limitation of which Platt performs or is inherently capable of performing.

In the alternative, it is well known in the physiological signal monitoring art to monitor physiological data from a patient, the acquisition device being disposed on the chest of the patient. Flach et al. teach signal acquisition using a data collection unit (102A) disposed on the chest of the patient that is connected to relatively short leadwires for the purpose of monitoring the ECG of the patient (figure 2; col. 7 @ 21-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the data collection / data acquisition unit disposed on the chest of the patient that is connected to relatively short leadwires in the Platt system in order to provide a proven convenient compact system that secures the monitor to the patient enabling continuous data collection for the ambulatory patient (col. 1 @ 44-51).

Claim Rejections - 35 USC § 103

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (US 6730025) in view of Rohde (US 5876351) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Platt (US 6730025) in view of Flach et al. (US 6773396) and further in view of

Rohde (US 5876351). As discussed in paragraph 4 of this action, Platt discloses the claimed invention except for the display being an LCD with sufficient resolution to display waveforms.

Rohde teaches data display on a GAMEBOY™ system using an LCD (20) with sufficient resolution to display waveforms for the purpose monitoring the ECG of the patient. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used an LCD with sufficient resolution to display waveforms in the Platt system in order to provide a proven GAMEBOY™ communication means for signal display (col. 5 @ 18-21).

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (US 6730025) in view of Skelton et al. (US 6292692) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Platt (US 6730025) in view of Flach et al. (US 6773396) and further in view of Skelton et al. (US 6292692). As discussed in paragraph 4 of this action, Platt discloses the claimed invention except for the screen being a touch screen interface.

Skelton et al. teach communications interface using a touch screen for the purpose of making input selection known to a controller/ microprocessor. Absent any teachings of criticality of unexpected results, merely changing the input means from a joypad and control buttons to a touch screen interface would be an obvious design choice.

7. Claims 6-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (US 6730025) in view of Rockwell et al. (US 6141584) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Platt (US 6730025) in view of Flach et al. (US 6773396) and further in view of Rockwell et al. (US 6141584). As discussed in paragraph 4 of this action,

Art Unit: 3762

Platt discloses the claimed invention except for: a read only memory card (claims 6 and 7), wireless communication using an infrared transceiver (claim 8) or a radio frequency transceiver (claim 9), an audio recording unit (claim 10), signal conditioning circuits (claim 11), a “baseline sway filter” (claim 12) and signal analysis and interpretation (claim 14).

As to a memory card, Rockwell et al. teaches data storage using a read only memory card for the purpose of recording the ECG and audio data in memory. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the read only memory card in the Platt system in order to provide a mechanism enabling the collected data to be reviewed and analyzed at a future time (col. 11 @ 3-16).

As to wireless communication, Rockwell et al. teach wireless communication using infrared and radio frequency communication signals for the purpose of conveying information to remote locations. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used infrared and radio frequency signals in the Platt system in order to enable sharing of information and report generation to optimize the patient’s treatment (col. 5 @ 2-17).

As to an audio unit, Rockwell et al. teach event recording using an audio unit for the purpose of documenting events associated with patient interaction and care. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used an audio unit in the Platt system in order to provide a more comprehensive understanding of the patient’s condition and the treatment afforded the patient so the events are accurately reconstructed (col. 10 @ 1-9).

As to signal conditioning and filtering, Rockwell et al. teach signal conditioning using an amplifier, filter (read as a baseline sway filter), A /D converter for the purpose of optimizing the quality of the signal. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used signal conditioning including baseline sway filtering in the Platt system in order to eliminate signal artifact, making the cardiac signals distinct so they can be more easily interpreted (col. 10 @ 46-49).

As to signal analysis, Rockwell et al. teach cardiac signal evaluation using signal analysis for the purpose of detecting the cardiac rhythm of the heart. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used signal analysis in the Platt system in order to alert the user to cardiac condition, so conditions such as ventricular tachycardia requiring immediate medical attention can be identified and treated (col. 10 @ 49-51).

Statutory Basis

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (571) 272-4953. The Examiner can normally be reached on Monday – Friday from 9 a.m. to 5:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the

Art Unit: 3762

organization where this application or proceeding is assigned is (703) 872-9306 for regular communication and for After Final communications.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

JPO
11/9/04

Angela D. Sykes

ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700